IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

Crl.Rev.Pet.No. 2713 of 2007()

CRA.107/2005 of ADDL.SESSIONS COURT (ADHOC)-IV, TRIVANDRUM
ST.688/2003 of CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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REVN. PETITIONER: APPELLANT/ACCUSED:

SUBRAMONIAN SESHAN,
TC.25/2417, KALPALAYAM LANE, PUTHENCHANTHAI,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.SUDHEER

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE:

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1. M/S. HONGKONG AND SHANGHAI BANKING CORPORATION LTD., P.O.BOX NO.2244,VELLAYAMBALAM, THIRUVANANTHAPURAM, REPRESENTED BY ITS POWER OF ATTORNEY HOLDER, BIJU JOHNES, S/O.N.DANIEL JONES, COLLECTION OFFICER, HSBC BANK, VELLAYAMBALAM, THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 2713 of 2007

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Dated: 25th day of September, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No. 688 of 2003 on the file of the Chief Judicial Magistrate, Thiruvananthapuram challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor. Even though the 1st respondent complainant was duly served, it has not chosen to enter appearance.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. The counsel for the revision petitioner submits that the revision petitioner had produced Exts. D1 and D2 receipts by which the amounts

covered by Exts. P2 to P4 cheques were repaid. The court below were therefore requested to take a lenient view with regard to the sentence to be imposed on him. However, the courts below took the view that those payments were made after the complainant had taken legal steps.

5. There was no dispute before the courts below that the cheque amounts have been discharged as per the payments evidenced by Exts. D1 and D2. If so the above payment need only be treated as compensation under Section 357(3) Cr.P.C. Hence, I set aside the sentence imposed on the revision petitioner by the courts below and hold that the payments effected as evidenced by Exts.D1 and D2 receipts could constitute compensation payable to the complainant under Section 357(3) Cr.P.C. The petitioner shall suffer imprisonment till the rising of the court for which purpose he shall surrender before the court below on 17.11.2007.

5. Amount, if any, paid by the revision petitioner pursuant to the orders, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

V. RAMKUMAR, JUDGE.

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